

REMARKS/ARGUMENTS

In response to the Office action dated August 7, 2009, Applicants hereby request the Examiner to reconsider her rejection for the reasons set forth hereinbelow.

Initially, Applicants are submitting by first class mail copies of the priority documents referred to by the Examiner on page 2 of her last Office action so as to perfect the claim for priority.

In addition to the foregoing, Applicants submit herewith a terminal disclaimer so as to overcome the Examiner's nonstatutory obviousness-type double patenting rejection set forth on page 3 of the Examiner's action.

With regard to the rejection of claims 44-50, 58-66, 76, 78-80, 86 and 88-91 under 35 U.S.C. 103 over Kouzuki et al. ('379) in view of Panitch ('165) and Kuo et al. ('689) as evidenced by Abil, Applicants respectfully request the Examiner to reconsider this rejection for the reasons set forth hereinbelow.

Independent claim 44 is drawn to a water-in-oil emulsion. The primary reference ('379) to Kouzuki et al. does not disclose a product in the form of a water-in-oil emulsion. There is nothing in the '379 document to suggest a water-in-oil emulsion. The examples of the '379 document refer to liquids, gels, pastes, creams and emulsions; however, nowhere is it stated that the composition comprises a water-in-oil emulsion as claimed.

In addition to the foregoing, the primary reference to Kouzuki et al. ('379) is further defective in that the reference does not teach or disclose an ester as claimed wherein the melting point is in the range of 40 to 200°C. The Examiner refers to example 16 of the Kouzuki et al. ('379) patent; however, this example does not disclose the claimed ester as set

forth in independent claim 44 nor the claimed water-in-oil emulsion. In this regard, Applicants attach as Exhibit A a data sheet for Pentaerytrityl Tetraoctanoate which indicates that Pentaerytrityl Tetraoctanoate is a colorless liquid oil. Clearly, therefore, Pentaerytrityl Tetraoctanoate does not have the liquid melting point as claimed in independent claim 44.

In addition, the Examiner refers to Column 5, lines 17-24. This portion cited by the Examiner refers to "polar oil". Polar oil is known to be liquid at room temperature and thus does not have the required melting point set forth in independent claim 44. The Examiner acquiesces that Kouzuki et al. ('379) does not disclose the missing emulsifier, and to this point Applicants agree. It should be noted, however, that no one skilled in the art would substitute such an essential substance as the disclosed Pentaerytrityl Tetraoctanoate in ('379) with an emulsifier. The only reason for such a substitution is Applicants' instant disclosure.

With regard to the secondary reference to Panitch ('165), it is clear that the composition of the ('165) reference is a gel and not a water-in-oil emulsion as is required by independent claim 44. While the Examiner cites column 12, lines 28-29 for a supposed teaching of a "fatty ester as a solid compound", the Examiner takes this disclosure out of context. This disclosure must be read in context with the three lines above wherein it is stated that the fatty acid is included in the antiperspirant composition as an emollient. (see column 12, lines 25-27). This is in direct contradiction to the constituent of the present invention as set forth in paragraph [0026] of the instant application wherein it is set forth that "As an essential constituent, the outer phase contains a polyvalent ester component which contributes to structure formation and which is

used as a wax-like constituent.". It would make no sense to use an emollient for structure formation of an emulsion and, therefore, the teaching of Panitch ('165) is not a functional equivalent to the ester claimed in independent claim 44.

With regard to the Kuo et al. ('689) reference, the Kuo et al. ('689) reference does teach the use of an emulsifier in a sunscreen emulsion, particularly, Abil EM 90. If one skilled in the art were to include this emulsifier in Kouzuki et al. ('379), there may be a chance to obtain an emulsion; however, there is no reason to provide this teaching in Kouzuki et al. ('379), that is, an emulsifying agent in any of examples 1-21, as recognized by the Examiner on page 5 of her Office action. If Abil EM 90 were incorporated into example 16 of Kouzuki et al. ('379), the system would destabilize by using an emollient as suggested by Panitch ('165). Thus, a water-in-oil emulsion having the characteristics claimed would never result from the combination of references.

In light of the foregoing, it is respectfully submitted that the Examiner's rejection of the claims as currently pending is improper and belies the concept of a whole clause of 35 U.S.C. 103. Applicants respectfully request the Examiner to withdraw the rejections set forth in the Office action of August 7, 2009 and issue a formal notice of allowance.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as pending patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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